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ABSTRACT

This handbook contains information on the planning, development and implementation of Title I programs in New York State. In an overview of general State education department policy, guidelines on program priorities, application procedures, kindergarten and prekindergarten programs, programs for educationally disadvantaged handicapped pupils, administrative and indirect costs, supportive services, and joint program planning of ESEA Title I and pupils with special educational needs are outlined. Also presented are selected Federal regulations from the "Federal Register" and pertinent notes on the regulations. Additional regulations and special instructions are explained. (Author/AM)

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ELEMENTARY AND SECONDARY EDUCATION ACT TITLE 1

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State Policies and Federal Guidelines for Education of the Disadvantaged

(Selected Summary)

UD018324

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Division of Federal Education Opportunity Programs
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FOREWORD

At the present time, Congressional committees are conducting hearings and are analyzing results from special national studies for possible changes in legislation to continue Title I of the Elementary and Secondary Education Act. Legislation is expected to be considered and voted upon in Congress by June, 1978. Therefore, this interim, restricted manual of guidelines concerning selected regulations has been prepared to highlight the changes which have been made through amendment since the last compilation of ESEA Title I Guidelines.

The Elementary and Secondary Education Act (ESEA) has been successfully implemented for twelve years in over 700 school districts in New York State. Pinpointing the needs of the educationally disadvantaged students in areas of concentrations of low income families has provided not only supplementary educational services to approximately 400,000 students a year, but also activated a search for techniques and methods which are more effective in meeting the assessed needs of the participants in ESEA Title I programs.

Comprehensive needs assessment based on standardized norm and criterion referenced tests has prompted individualized activities. Individualized or small group instruction based on the diagnostic/prescriptive approach to correction of reading and math deficiencies has received impetus through ESEA Title I programs. The necessity for valid evaluation designs to assess the achievement of objectives in ESEA Title I programs has provided school districts with objective results with which to judge the worth of their program efforts.

This publication is provided to you at this time for your use in reviewing current programs and planning for programs for the next school year.

Additional copies will be supplied on request.

Sterling S. Keyes

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PREFACE

The purpose of Title I of the Elementary and Secondary Education Act is to provide financial assistance to local school districts for supplementary educational activities in areas with concentrations of low income families. Section 201 of the Declaration of Policy states:

> In recognition of the special educational needs of children of low income families and the impact that concentrations of low income families have on the ability of local educational agencies to support adequate educational programs the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in this title) to local educational agencies serving areas with concentrations of children from low income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.

This publication is designed to assist program coordinators in planning, developing and implementing education programs funded under Title I of the Elementary and Secondary Education Act of 1965 as amended.

The manual is divided into three sections. Section I includes an overview of general State Education Department policy information. Section II contains selected Federal regulations from the Federal Register of September 28, 1976 with pertinent notes. Section III includes notes only on regulations which are of a complex nature and have generated special instructions, such as comparability report forms, etc. The regulations covering these topics will be found in the Appendix.

For reference, a copy of the Federal Register of September 28, 1976 was sent to you in 1976. Please review this Register if you have further questions relative to:

(a) interrelated aspects of specific regulatory concerns
(b) definitions, Declaration of Policy, statute subparts, state assurances; general provisions, and so forth

Other Federal statutes which contain regulations affecting ESEA Title I are: General Education Provisions Act; Civil Rights Act of 1964; Right to Privacy Act; Freedom of Information Act; Education Amendments of 1974 and 1976; Title IX of the Education Act amendments of 1972.

New York State statutes which apply are the Public Officers Law, Article VI (Freedom of Information Law) and Article VII (Open Meeting Law); Executive Law, Article XV (Human Rights Law).

SECTION I

Policies Of The New York State Education Department Affecting ESEA Title I

State Program Priorities

The program priorities which have been established for ESEA Title I by the Commissioner of Education and the Board of Regents are reading and/or mathematics, using bilingual methodology where appropriate.[1]

The priority areas apply equally to programs in public schools, nonpublic schools, institutions for neglected and delinquent children and in correctional institutions.

Receipt of Application

The date of receipt of an application in approvable form is the date of funding for the program. "Approvable form" includes the following:

a. a completed ESEA Title I application with the required assurances signed by the chief school officer

b. a completed needs assessment of the eligible students

c. a program description and evaluation design

d. a complete budget

e. evidence of reasonable success in the previous year if the program is a recycled one

Kindergarten and Pre-Kindergarten

While pre-kindergarten and kindergarten programs are fundable, school districts are advised to review carefully the needs assessment of pupils in grades one through twelve and to meet these needs prior to the funding of a pre-kindergarten or kindergarten program. If a school district can provide data showing that the needs of educationally disadvantaged students are being met in grades one through twelve, programs for pre-kindergarten and kindergarten levels are approvable.

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[1] Non-English-speaking pupils or pupils with limited English-speaking ability must be provided assistance in reading and/or mathematics education by the school district, using state and local funds, prior to the funding of a supplementary program using ESEA Title I funds.

Programs for Educationally Disadvantaged Handicapped Pupils

Handicapped children attending public and nonpublic schools are eligible for ESEA Title I services. However, because of the several sources of funding specifically designed to assist pupils with physical or mental handicapping conditions, the policy of ESEA Title I is that, to receive compensatory services, the handicapped student must be educationally disadvantaged.

Administrative Costs

Administrative overhead charges should be kept to an absolute minimum. The emphasis in expenditure of funds should be on direct services to children.

Indirect Costs

Indirect costs reimbursement is used to cover normal school district expenses incurred through the implementation of the ESEA Title I program. Examples of these items are heat, light, building space, etc. and other districtwide expenses for ESEA Title I programs such as the salary of a districtwide program coordinator. Ordinary operating expenses which would be incurred whether or not an ESEA Title I project existed are not to be included in indirect cost.

Supportive Services

When supportive services are necessary to the success of the project, the employment of a guidance counselor or a psychologist, for example, would be fundable. Supportive services funded by ESEA Title I must impact on participants receiving supplementary education activities in reading and/or mathematics in an ESEA Title I program.

Joint Program Planning - ESEA Title I and Pupils With Special Educational Needs

Dependent upon conformity with appropriate state and Federal statutes and regulations and based upon comprehensive pupil assessments, program priority decisions including grade level and curriculum must be made by school officials which are consistent with the Board of Regents basic skills program priorities. In the decision-making process, local and state funds available for this purpose must be applied equitably, objectively and consistently districtwide to meet the identified needs of the program eligible pupils regardless of the school in which the pupils are enrolled, including schools which are eligible for ESEA Title I funds. Subsequently, ESEA Title I funds may be programmed additionally in target schools to meet further the needs of eligible ESEA Title I pupils.

For further information concerning this complex topic, please confer with staff of the appropriate ESEA Title I regional office.

§ 116.5 Approval by State educational agency of applications from applicant agencies.

(a) *Review by State educational agency.* The State educational agency shall review all applications by applicant agencies except for an applicant agency under Part 116d. The State educational agency shall not approve an application (1) for an amount which together with amounts of other approved applications by that agency, exceeds the amount available for grants to that agency determined in accordance with Title I or (2) unless it has determined that the application meets all of the applicable requirements of Title I and the regulations.

(b) *Effective date of approved application.* Projects approved pursuant to paragraph (a) of this section shall be considered to be in effect as of the date on which the application was submitted in substantially approvable form. In no event shall such date be earlier than the first day on which the funds being applied for become available for obligation, or the effective date of the State educational agency's annual program plan.

(c) *Notice and opportunity for hearing.* The State educational agency shall not finally disapprove any application in whole or in part without first affording the applicant agency reasonable notice and opportunity for a hearing with respect to such action in accordance with the requirements of section 425 of the General Education Provisions Act. Such notice shall include the reasons for the proposed disapproval. A hearing shall be held by the State agency 30 days after it receives a request from the applicant agency. If the State educational agency decides not to rescind its final action, it shall give notice of the decision to the applicant agency in writing, stating its reasons and indicating the right to appeal to the Commissioner within twenty days of the receipt of the notice.

(d) *Appeal.* An applicant agency aggrieved by the final action of a State educational agency shall be given the opportunity for an appeal to the Commissioner as set forth in section 425 of the General Education Provisions Act.

(e) *Availability to the public.* Each application of a local educational agency or a State agency for a grant under Title I; the related documents referred to in Parts 116a, 116b, 116c, and 116d; and the evaluation and other reports referred to in such parts, shall be made available to the public by the State educational agency in the manner prescribed by § 116.35.

Date of Application
Hearings and Appeal

Notes

Funding Date

- The date of receipt of the application in the appropriate regional office is the date on which funding begins.

Hearings

- This article may be used in the event that the project application submitted by the local education agency (LEA) is disapproved by the State Education Department (SED) in whole or in part.
- An LEA may request a hearing from the State Education Department within 30 days to protest a disapproval of an application, in whole or in part.
- A written request for a hearing should be addressed to the Commissioner of Education, New York State Education Department, Albany, New York 12234.
- An appeal may be made by an LEA to the United States Commissioner of Education within 20 days on a decision of the State Education Department concerning an application disapproval.

Review and Complaint Procedures

§ 116.6 Review and complaint procedures.

The State educational agency shall establish procedures for investigating complaints alleging violations of Title I or the regulations for that Title including:

(a) Procedures to carry out section 425 (a) and (c) of the General Education Provisions Act and § 116.5(c); and

(b) Procedures for resolving the complaints of parents and other individuals and organizations, including:

(1) Specific time limits for investigation and resolution of complaints, not normally to exceed 60 days;

(2) An opportunity for the complainant to present evidence to the State educational agency; and

(3) Dissemination of information concerning procedures under this paragraph to interested parties, including parent advisory councils.

Notes

- Any complaint to the appropriate Title I Regional Office of the State Education Agency must be made in writing. (See page 35 for addresses.)
- After receipt of the written complaint, the LEA will be contacted. Procedures are outlined for followup of the complaint.
- Resolution of the complaint would normally take no longer than 60 days.
- No action will be taken on anonymous complaints.

Maintenance of Effort
Planning Grants

§ 116.19 Maintenance of effort.

(a) *General requirement.* No payments under Title I for any fiscal year may be made by the State educational agency to an applicant agency unless the State educational agency finds that the combined fiscal effort of that applicant agency and the State with respect to the provision of free public education by that applicant agency for the preceding fiscal year was not less than such combined fiscal effort for that purpose for the second preceding fiscal year.

(b) *Measurement of combined fiscal effort.* For purposes of this section, combined fiscal effort by an applicant agency shall be measured by the amount of the current expenditures per pupil by the applicant agency other than expenditures from funds derived from Federal sources for which the applicant agency is required to account to the Federal Government directly or through the State educational agency; such as funds under Titles I, II, III and IV of the Act, Titles III and V of the National Defense Education Act of 1958, the Johnson-O'Malley Act, and the Economic Opportunity Act of 1964. A combined fiscal effort in the preceding fiscal year shall not be deemed to be a reduction from that in the second preceding fiscal year unless the per pupil expenditure in the preceding fiscal year is less than that in the second preceding fiscal year by more than 5 percent. Any such reduction in the combined fiscal effort by an applicant agency for any fiscal year by more than 5 percent will disqualify the applicant agency unless the agency is able to demonstrate to the satisfaction of the State educational agency that such a reduction was occasioned by an unusual event, such as the removal of a large segment of property from the tax rolls, that could not have been fully anticipated or reasonably compensated for by the applicant agency and a diminished fiscal effort on the part of that agency is not otherwise indicated.

§ 116.30 Planning grants.

An applicant agency may apply for a grant in an amount not exceeding one percent of the maximum grant it is eligible to receive or $2,000, whichever is greater, for planning during the current fiscal year, provided that (a) such planning was, or will be, directly related to programs or projects to be carried out under Title I of the Act and has resulted, or is reasonably likely to result, in a program which will be carried out under that Title, and (b) such planning funds are necessary for that purpose because of the innovative nature of the program or project or because the local educational agency lacks the resources necessary for adequate planning for programs or projects to be carried out under Title I.

Notes

- A reduction of 5% or more in the maintenance of effort figure for the preceding fiscal year requires a written explanation which will be considered prior to project approval.

- The funds for planning grants will be deducted from the total allocation to the particular LEA.

- Application should be made on the same forms used for a Title I, ESEA project.

Cooperative Projects
Construction and Equipment

Notes

§ 116.31 Cooperative projects.

Two or more applicant agencies eligible for grants under Title I of the Act may apply for a grant for a single project (including a planning project) to be carried out jointly in accordance with arrangements between or among such educational agencies.

Cooperative Project

- Each of the superintendents of the cooperating schools must agree in writing to the release of funds to the selected administering school district.
- Pages 1-6 of the application must be submitted for each cooperating district.
- Page 1 should be completed for the administering school district.
- Form, "Certification for Participation in Cooperative Projects," must be submitted with each application and with each subsequent program and/or budget modification.

§ 116.32 Construction and equipment.

(a) *General.* An application for a project grant under Title I may include the acquisition of equipment or the construction or remodeling of school facilities only if it is demonstrated as being essential to the success of a program or project under Title I. Each application shall describe the need for such equipment or construction, in addition to other equipment or facilities previously acquired or constructed by the applicant with funds under Title I and for which the applicant is accountable, in connection with the proposed project. The applicant shall further describe how all such equipment or facilities will be used. If the construction of school facilities is so demonstrated as being essential for a program or project, the application must nevertheless comply with other requirements of Title I and the regulations in this chapter, such as the requirements in Subpart K, Part 100b of this chapter in regard to labor standards and overall State construction planning and, in relation to the overall program, the limitations in § 116a.23(f) in regard to participation by children enrolled in private schools.

(b) *Prohibition against maintaining isolation.* The State educational agency shall not approve a project involving construction of school facilities if it finds that such construction would tend to maintain the racial, cultural, or linguistic isolation of children.

Construction and Equipment

- New York State does not approve the expenditure of ESEA Title I funds for permanent construction.
- Remodeling or temporary modification may be approved in existing buildings within existing floor areas at a cost rate equivalent to such expenses in surrounding facilities in the area.
- Written justification with specifications must be submitted for consideration prior to approval.
- Minor remodeling may not exceed $2,000 per room.

Education Aide Training
Staffing
Training

§ 116.34 Education aides.

An application for a project which involves the use of education aides shall include evidence that the applicant agency has provided, or will provide, a coordinated program of training in which the aides participate together with the professional staff whom they will assist.

§ 116.35 Staffing for programs and projects.

Payment of Title I funds may be authorized for the employment of the personnel required to provide specific services set forth in approved Title I applications. Such applications shall state the number and types of personnel to be employed.

§ 116.36 Training.

Payment of Title I funds may be authorized for pre-service and in-service training of persons identified in this section.

(a) *Scope of training.* Such training must be directly related to: (1) The services which such persons will perform during the same project year in connection with an approved program or project under Title I; and

(2) Their needs for the development of competencies required if the program or project is to be effective in meeting the special educational needs of the identified children to be served in the program or project. Such training must be coordinated with any other training being provided in connection with the program or project.

(b) *Eligible persons.* Such training may be provided for:

(1) Title I staff members, Parent Council members, and volunteers who are engaged to perform specific services related to approved programs or projects;

(2) Non-Title I staff specialists who will be dealing solely with children to be served by the Title I projects, and regular classroom teachers of such children; and

(3) The principal of a school for which a Title I program or project has been approved.

Notes

Education Aide

- Paraprofessionals paid by Title I funds must render services in the instructional activities only. Costs incurred in assignments such as hall and lunch room monitoring are not reimbursable.

Staffing

- All personnel funded by Title I must be supported in the application with a description of duties and responsibilities.
- Support personnel in the fields of guidance, psychology, and other support positions who are paid in full by Title I funds may work only with Title I participants and staff.

Training

- Non-Title I staff members can participate in Title I funded inservice training. Non-Title I classroom teachers can participate if they have a substantial number of project participants enrolled in their classrooms.

Supplementary Aspect

§ 116.40 Title I funds supplementary to State and local funds.

(a) *General.* (1) Each application by an applicant agency for a grant under Title I shall contain an assurance that the use of the grant funds will not result in a decrease in the use (for educationally deprived children) of State or local funds which, in the absence of funds under Title I, would be made available for the education of such children, and that such children will not otherwise be penalized in the application of State and local funds because of such a use of funds under Title I.

(2) No project under Title I shall be approved unless Federal funds made available for that project (i) will be used to supplement, and to the extent practical, increase the level of State and local funds that would, in the absence of such Federal funds, be made available for the education of pupils participating in that project; (ii) will not be used to supplant State and local funds available for the education of such pupils; and (iii) will be used solely to pay the excess costs of programs and projects assisted under Title I.

(b) *Services which applicant is required to provide.* Title I funds shall not be used to provide services which the applicant agency is required to provide by State law or pursuant to a formal determination under Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972 (Pub. L. 92-318), or section 504 of the Vocational Rehabilitation Act of 1973, as amended, or pursuant to a final order of a court.

Notes

- Title I funds must support only supplementary services over and above the regular developmental tax-funded programs in the priority areas established by the New York State Education Department.

- State categorical funds must be objectively programmed districtwide before Title I funds are applied since they are part of state formula funds appropriated to aid local school districts.

- Title I services provided to programs for educationally disadvantaged handicapped children must be supplementary to the base program and must follow the program priorities established by the New York State Education Department.

- Participants must be educationally disadvantaged.

- State and Federal funds provided specifically for the handicapped should be utilized prior to the application of ESEA Title I funding.

Coordination with Other Agencies and Programs

§ 116.41 Relation of Title I projects to other programs.

(a) *Coordination in development of application.* Each application by an applicant agency for a grant under Title I shall demonstrate that, in the development of such application, the applicant has taken into consideration benefits which are or may be available through other public and private agencies, and which would contribute toward meeting the special educational needs of educationally deprived children. Such application shall also demonstrate that the applicant has considered suggestions and offers of assistance which have been timely made by such agencies and which may aid in carrying out or making more effective the program or project for which application is made. Applicants shall, upon request, make their applications available to interested public and private agencies far enough in advance of final formulation to enable such agencies to make meaningful suggestions and offers.

(b) *Simultaneous use of funds.* The simultaneous use of funds under Title I and funds under other Federal programs to support discrete portions of a particular project is permissible if (1) the requirements of each program, considered separately, are satisfied with respect to the portion of the project which is being financed from such program; (2) there is no commingling of funds derived from one appropriation with funds derived from another appropriation; and (3) there is no transfer of funds derived from an appropriation to the use of an activity not authorized by the law authorizing such appropriation.

(c) *Use of State and local funds.* A program or project set forth in a project application that meets all the requirements of Title I shall be funded from State and local funds to the extent that such funds are specifically designated and available at the time of application for particular services included in the project. Under the conditions set forth in this section, Title I funds may be used to provide those services not provided by funds from other sources.

Notes

- Local education agencies should consult with local health and social service and other state and Federal agencies for assistance in augmenting Title I services to participants.

Title I Property in Nonpublic Schools

§ 116.42 Administrative control of Title I property.

(a) *Control and title in public agency.* Control over the use of funds provided under Title I, and title to and administrative control over property acquired with these funds, shall be in a public agency, which will exercise such control consistent with §§ 100b.215 and 100b.216 of the general provisions regulations (45 CFR 100b.215, 100b.216). These funds and property shall be used for the purposes provided in Title I but such use shall not inure to the benefit of any private school. The incidental use of such property for other purposes is permitted only for related educational purposes on public premises and only so long as such use does not interfere with the carrying out of a Title I project.

(b) *Equipment.* Equipment acquired with Title I funds may in certain cases be placed on private school premises. Title to and administrative control over such equipment must be retained and exercised by a public agency. In exercising that administrative control, the public agency shall keep records of, and account for, the equipment and shall also assure itself that the equipment is being used solely for the purposes of the project, and remove the equipment from the private school premises when necessary to avoid its being used for other purposes or when it is no longer needed for the purposes of the project.

(c) *Assurance.* An application for a grant under Title I must contain satisfactory assurance that Title I funds and property derived therefrom, will at all times be under the control of, and be administered by, a public agency in accordance with the provisions of Title I and the regulations in this part.

Notes

- All equipment and materials purchased for use in a nonpublic school program must be labeled and identified as Title I property of the LEA administering the project.

- All materials if housed on nonpublic school premises should be inventoried annually when the LEA inventory of Title I property is updated.

Evaluation Report

§ 116.43 Measurement of educational achievement and evaluation of programs.

(a) *Annual evaluation procedures.* Each application by an applicant agency for a grant under Title I shall describe the procedures and techniques to be used in making at least annually an evaluation of the effectiveness of the program in meeting the special educational needs of participating children including appropriate performance criteria and the instruments and methods to be used to measure objectively changes in the educational achievement of such children.

(b) *Standards.* The measurement of educational achievement of participating children shall be carried out with regard to objective standards or norms. The type of measurement used shall give particular regard to the requirement under § 116.7 of Subpart B that the State educational agency report to the Commissioner on the effectiveness of the programs in that State in improving the educational achievement of participating children.

(c) *Children in private schools.* The evaluation of programs and projects shall, consistent with the nature and extent of participation of children enrolled in private schools, be extended to such participation.

Notes

- All programs must be evaluated in terms of the educational achievement of the participants by the use of norm or criterion referenced standardized tests.
- Short-term programs, whether in public schools, nonpublic schools or institutions, must be evaluated and reported as part of the LEA report, using criterion referenced materials.
- See Section 116.46.

Dissemination
Public Information

§ 116.44 Dissemination and utilization of results of educational research and demonstrations.

Each application by an applicant for a grant under Title I shall describe the methods to be used by the applicant for reviewing, selecting, and disseminating to teachers and educational administrators significant information on the latest developments and most recent experiments in education so that such information will be available for use in program planning and operation. These methods may include, among other things, inservice education, professional workshops and seminars, consultations and visitations, and reports on the organization, operation and outcome of projects under Title I.

§ 116.45 Public information.

Each application by an applicant agency for a grant under Title I shall include specific plans for disseminating information concerning the provisions of Title I, and the applicant's past and present Title I programs—including evaluations of such programs—to parents and to the general public. The applicant agency shall make available to them, upon request, those applications, evaluations of the applicant's past Title I projects, all reports required by § 116.46 to be submitted to the State educational agency, comparability reports and such other documents as may be reasonably necessary to meet the needs of such parents or other members of the public for information related to the comprehensive planning, implementation, and evaluation of the Title I program, but not including information relating to the performance of identified children and teachers. Such information and documentation shall be available until the expiration of five years after the completion of a Title I project, or until any impending audit by the Department of Health, Education, and Welfare or the General Accounting Office (consistent with Section 434(a) of the General Education Provisions Act) has been completed and the questions arising out of it have been resolved. Such plans shall include provision for the reproduction, upon request, of such documents free of charge or at reasonable costs (not to exceed the additional costs incurred which are not covered by Title I funds) or provisions whereby persons requesting such copies will be given adequate opportunity to arrange for the reproduction of such documents.

Notes

- All personnel in a school district should be made aware of the Title I activities and the results of these activities.
- School districts are encouraged to plan inservice education so that the most recent research on corrective reading and math techniques can be the basis for the planning and operation of Title I programs.

- Title I documents are public information. Such documents include the completed application with budget, job description and program description, evaluation reports, comparability information and other reports.
- Documents of a personal nature or student records may be available according to the Freedom of Information Law and/or the Right to Privacy Act.
- Written requests for copies of documents which will require reproduction must be submitted in advance of the date needed.
- A nominal fee may be charged for the duplication of documents.

Reports
Individualized Plans
Operational Responsibilities

§ 116.46 Reports by applicant agencies.

Each application by an applicant agency under Title I shall provide assurance that the applicant agency will render to the State educational agency an annual report and such other reports, in such form, and containing such information, including the results of objective measurements of educational achievement and program effectiveness required by § 116.43 and of research and replication studies, as may be reasonably necessary to enable the State educational agency to perform its duties under Title I. In the case of reports relating to performance the information supplied shall have been developed in accordance with specific performance criteria related to program objectives.

§ 116.47 Individualized educational plans.

In considering applications under Title I, a State educational agency shall encourage where feasible applicant agencies submitting such applications to provide for the development for each child participating in an approved program or project under such Title I, an individualized written educational plan (maintained and periodically evaluated), agreed upon jointly by the applicant agency, a parent or guardian of the child, and when appropriate, the child. Funds under Title I of the Act may be used for the purpose of developing, maintaining and evaluating such plans.

§ 116.48 Operational responsibilities.

The approval of an application under Title I does not relieve an applicant agency of the responsibility to carry out its project or projects in accordance with the approved application, Title I, and the applicable regulations.

Notes

- Evaluation results should be reported on State Education Department forms to facilitate state reporting to the United States Office of Education.
- Where evaluation results prove negative or reflect neither gains or losses, programs will not be automatically recycled until cooperative analysis made with the school district is completed, resulting in the redesign of the program.
- The use of the diagnostic/prescriptive approach, if documented, accumulated and updated, would provide the basis for an individual education plan.
- The LEA is responsible for carrying out all operations according to Federal regulations and interpretations.
- No representative from any state or Federal agency may waive such regulations.

Reallocation of Funds

§ 116a.11 Reallocation.

(a) *States.* (1) The State educational agency in the States of the Union, the District of Columbia, and Puerto Rico shall determine not earlier than March 31 of a fiscal year the amounts allocated for that year to local educational agencies in excess of the amounts required for approved programs and projects and shall certify such amounts to the Commissioner. Such amounts shall be made available, first by State educational agencies to other educational agencies in the particular State but not so as to make available to an agency more than the maximum grant to which that agency is entitled. (2) The amounts made available under this paragraph for distribution within a State shall be distributed among the local educational agencies which apply for additional funds and which have the greatest needs to redress inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 103(a)(2) of Title I and §§ 116a.4 and 116a.5. The needs of the local educational agencies, and the amounts to which they shall be eligible, shall be determined on the basis of the extent to which the State educational agency determines the application of those provisions fail, as a result of population shifts, changing economic conditions, or other reasons, to reflect actual needs. (3) In the event excess amounts are still available after applying the foregoing provisions of this paragraph, those excess amounts will be distributed by the Commissioner among other States of the Union or the District of Columbia, or Puerto Rico in accordance with their needs as determined by the Commissioner for use by local educational agencies having the greatest need therefor. In no event, however, will the total amount made available to an agency exceed the maximum grant to which that agency is entitled. (4) "Maximum grant" for the purpose of this subsection means the grant which a local educational agency is eligible to receive before the operation of the provision for ratable reductions as set forth in Section 144 of Title I and § 116a.9.

Notes

Only those districts which meet one or more of the following criteria are eligible to apply:

- unexpected influx of eligible pupils
- changing economic conditions
- population shifts
- increase of eligible neglected and delinquent pupils which reduces availability of aid for maintenance of district Title I programs
- a significant number of ESEA Title I eligibles in target area schools not being served
- situations affecting programs through no fault of the school district such as natural and/or man-made catastrophes
- valid problems and/or mistakes in determining the LEA's basic allocation
- program activities mandated by court action or as a result of an investigation carried out by official allied agencies
- the necessity for adopting Individualized Educational Plans (Section 116a.22)

Special Incentive Grants (Part B)

§ 116a.12 Special incentive grants.

(a) *General.* Subject to the provisions of section 144 of Title I any State of the Union and the District of Columbia shall be entitled to receive a grant pursuant to Part B of Title I if it meets the requirements of that Part.

(b) *Applications.* (1) An incentive grant under this section will be made to a State upon application therefor by the State educational agency to the Commissioner submitted not more than 30 days after the date on which the Commissioner notifies the State educational agency of the State's eligibility for such grant and the amount thereof, or by the end of the applicable fiscal year, whichever occurs earlier. (2) Such an application shall include information concerning the policies and procedures to be used in selecting the local educational agencies which will receive incentive grant funds and the amounts of such assistance. Such information shall be presented in detail sufficient to assure the Commissioner that incentive grant funds will be made available to local educational agencies in the State with the greatest need for assistance under Title I and in amounts corresponding to their respective needs. Such policies and procedures shall take into account factors appropriate for those purposes, including the amounts available to local educational agencies under Part A of Title I; the number and percentage of children from low-income families in the several school districts; the number and percentage of such children not otherwise being served under Title I; any sudden influx in the number of such children; dropout rates; the incidence and severity of special educational needs as indicated by test scores or other measures; the availability of funds from other sources for programs for educationally deprived children; and the local fiscal effort.

(c) *Use of funds.* Incentive grant funds shall be made available to a limited number of local educational agencies for specific projects which the State educational agency deems to be innovative or which: (1) Show special promise of success through the modification or revision of existing Title I programs; (2) are of sufficient size, scope, and quality as required by § 116a.22; (3) include performance criteria to be used in connection with the evaluation of such projects; and (4) otherwise meet the requirements for projects under Part A of Title I.

Notes

- The Division of Educational Finance and Management compiles an annual list according to a formula of approximately thirty LEAs eligible for Part B (Special Incentive Grants) at the time of the distribution of Part A funds.
- After notification of the additional grant, the LEA may expand or revise an existing program or institute a new component by the budget amendment procedure in accordance with state and Federal guidelines.
- Seven copies of a budget and a program description and an evaluation design should be submitted by each eligible LEA.

Project Applications

Notes

- LEA's which have local institutions for neglected or delinquent children within their borders and have been allocated funds on the basis of the number of these children must provide supplementary services to the eligible residents of the institution, according to priorities established by the New York State Education Department.

- Services under Title I must be administered by an LEA and cannot be contracted to another agency.

§ 116a.49 Project applications.

(a) *General.* Grants under Title I to a local educational agency may be made only on the basis of applications therefor which are submitted to the State educational agency and approved by it in an amount not in excess of the allocation of the funds made available for that local educational agency pursuant to § 116a.5 of Subpart B.

(b) *Projects and project areas.* (1) An application for a grant under Title I by a local educational agency shall set forth one or more projects specifically designed to meet the special educational needs of educationally deprived children residing in a school attendance area (or areas) having high concentrations of children from low-income families. (2) If the local educational agency has children living in institutions for neglected or delinquent children, who have been counted pursuant to section 103(c)(1)(C) of Title I and § 116a.5(b), then such application shall also set forth a project (or projects) designed specifically to meet special educational needs of such children.

(c) *Location of services.* The project itself shall be carried out at locations where the needs of the children can best be served.

(d) *Prohibition against assignment of allocation.* Subject to the reallocation authority in § 116a.11 of Subpart B, no local educational agency may assign any part of its allocation to another agency. This does not, however, prevent a State educational agency from exercising its authority under § 116a.7 nor prevent two or more applicants in one or more States from conducting a joint program or project (including a planning project) through a combined use of funds made available to them.

Institutions for Neglected and Delinquent Children

"Correctional institution housing children 5-17 inclusive" means a locally administered prison, jail, or similar facility in which children are housed as a result of their having been committed to that institution in accordance with state Law, for whom the average length of stay is at least thirty days.

"Institution for delinquent children" means a public or private residential facility which is operated primarily for the care of children who have been adjudicated to be delinquent or in need of supervision. The term also includes an adult correctional institution in which children reside.

"Institution for neglected children" means a public or private residential facility (other than a foster home) which is operated primarily for the care of at least ten children who have been committed to the institution, or voluntarily placed in the institution pursuant to applicable State law, because of the abandonment of or neglect by, or death of, parents or persons acting in the place of parents.

Notes

- The Bureau of Federal Education Opportunity Programs processes applications from other state agencies including the Division for Youth, Office of Drug Abuse Services and Department of Corrections.
- Applications for ESEA Title I programs for Legislative Act districts (U.F.S.D.) are also processed by the Bureau of Federal Education Opportunity Programs.
- The five regional offices of Federal Education Opportunity Programs process applications from LEA's which include proposed services to children residing in private institutions for neglected or delinquent children located within the school district boundaries.
- Form ESEA 1-4, Children Residing in Institutions for Neglected and Delinquent Children, must be attached to each application containing a proposal for services to such institutionalized children.
- In planning programs for an institution, the priorities of reading, math and bilingual methodology, where applicable, must be followed. The program must also be supplementary to the basic instruction provided from local tax levy and state aid sources.
- Funds generated by a count of neglected or delinquent children which are not used for such children are not available for any other use. These funds cannot be reallocated. If a program was not offered in a previous year for neglected or delinquent children, the funds generated by this population may be carried over to the next year for their benefit.

Section III

This section contains only notes on certain of the regulations which need extensive comment. The regulations themselves will be found in the appendix.

Attendance Areas *

See Federal Handbook "Title I, ESEA : Selecting Target Areas"

New options concerning selection of target areas include:

1. 30% provision - The SEA may approve attendance areas as eligible in which at least 30% of the children are from low-income families. Such a determination is based on the number of children eligible for full-price free lunch based on the National School Lunch Act.** If free-lunch data is used for this purpose, the LEA must use free-lunch data for all other information.

2. No wide variance - An entire school district may be regarded as a project area if there is no wide variance in the concentration of children from low-income families among the school attendance areas. The variation between the areas with the highest and lowest percentage must be not more than one-third of the average percentage of children from low-income families in the entire district.

3. Three-year provision - An attendance area served by Title I which loses its eligibility may be served in either or both of the following two fiscal years.

4. Target school in an ineligible attendance area - A school building with a high concentration of low-income children in attendance can be designated a target school even though it is located in an ineligible area. The percent of children from low-income families must equal or exceed the districtwide average on an average daily attendance basis.

5. Designation of a building as a target school based on serving the whole district allowable (e.g., one junior high school or one senior high school). However, when an LEA chooses to use this option and also wishes to include an elementary-level program, it must then group the elementary school buildings based on the districtwide average of children from low-income families attending elementary schools.

* See Appendix, page 26.

** The number of free milk recipients is not a valid criteria.

Needs Assessment *

Notes

- Participants may be held over in a Title I program in a succeeding year if they are still educationally deprived according to established criteria, until their achievement level is equal to their peers.
- The needs assessment in an LEA must include public and nonpublic school children, preschool-age children and dropouts.
- Consultation should take place with teachers, parents, school officials and officials of neglected and delinquent institutions, if applicable, including county jails, in the needs assessment process.

Following the initial data survey:

1. determine the areas of greatest need by rank order
2. establish grade levels to be served
3. designate potential project areas by rank order.
4. identify potential participants
5. use specified criteria for selection
6. select children most in need of supplementary services according to established criteria (example: 2 years below grade level or below the 23rd percentile)
7. refine actual needs through diagnostic procedures
8. establish specific services based on the diagnoses.

* See Appendix, page 27.

Project Description, Size, Scope And Quality *

Notes

- The objectives of the project must relate to the identified needs.
- The resources that will be used to meet the objectives should be described.
- An appropriate and adequate evaluation design should be planned.
- A project should be concentrated on a limited number of children and services limited to the identified participants.
- Expenditures must be limited to services for identified educationally deprived children.
- If Title I services are to be provided in the classroom, they must be directed only to the Title I selected children.

* See Appendix, page 28.

Nonpublic Schools *

See "Title I ESEA Participation of Private School Children : A Handbook for State and Local School Officials"

Notes

- Title I services must be provided to eligible nonpublic school children
- Applications from LEA's which contain a program for nonpublic schools should include the following information concerning the nonpublic school components:

  Number or educationally deprived

  Number expected to participate

  Degree and manner of participation

Needs Assessment

- Services and activities for nonpublic school participants may differ from those provided to public school participants, but the program must be comparable in scope and quality and opportunity.
- Nonpublic school participants must reside in an attendance area which is a project area.
- If an LEA has designated K-6 as the grade span for services, the nonpublic school program must fall within those grade levels.
- When an LEA does not comply with requirements to provide services to eligible nonpublic schools who wish to participate, the United States Commissioner of Education may by pass the LEA and provide services to the eligible nonpublic schools with a portion of the LEA allocation and state administrative funds.

* See Appendix, pages 29 and 30.

Parent Advisory Councils *

Notes

- The regulations on parent advisory councils are specific and must be implemented by each and every local school district which operates a Title I, ESEA program.
- Each Board of Education should have on record an accepted resolution endorsing the structure, role and objectives of its Parent Advisory Councils.
- All meetings of Parent Advisory Councils are public meetings and open to the public and must be announced to the public through news media at least seventy-two hours prior to each meeting.
- Minutes must be taken at Parent Advisory Council meetings, consisting of a record of all motions, proposals, resolutions and any other matters acted and/or voted on.

* See Appendix, page 31.

Comparability *

See State Education Department Booklet "ESEA Title I Comparability Reporting"

Notes

- Comparability means that services provided to Title I project schools from State and local funds must be at least equal to services provided to non-Title I schools; Title I funds must be used to provide additional services.
- Instructions for completing the required report on comparability are forwarded annually to every LEA with the reporting forms.
- New York State Education Department Regional Office staffs may be contacted for assistance in completing the report.

* See Appendix, pages 32, 33, 34.

APPENDIX

"Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside.

"Project area" means an attendance area, or combination of attendance areas, having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a project.

§ 116a.20 Selection of Title I attendance areas.

(a) *Designation of project areas.* An application for a grant under Title I by a local educational agency (other than an application for a grant for planning) shall designate the project area or the institution for which each project set forth in the application is designed. The project area must be sufficiently restricted in size in relation to the nature of the project as to avoid jeopardizing the effectiveness of the project in meeting its aims and objectives.

(b) *Eligibility of attendance areas.* (1) Except as otherwise provided in paragraphs (g) and (h) and section 150 of Title I of the Act, a school attendance area for either a public elementary school or a public secondary school may be designated as a project area, or for inclusion in a project area, if it has, on a percentage or numerical basis, a high concentration of children from low-income families.

(2) An attendance area may be designated under paragraph (1) on a percentage basis if the percentage of children from low-income families in that attendance area is at least as high as the percentage of such children residing in the whole of the school district. In addition, upon specific request by the local educational agency, the State educational agency may approve the designation of attendance areas in which at least 30 percent of the children are from low-income families. For the purposes of the preceding sentence, such children includes only children who are determined to be eligible for free lunches, pursuant to the criteria established by the appropriate State educational agency pursuant to the National School Lunch Act (42 U.S.C. 1758b) and for which regulations are provided in 7 CFR 245.

(3) An attendance area may be designated under paragraph (1) on a numerical basis if the estimated number of children from low-income families residing in that attendance area is at least as large as the average number of such children residing in each of the several school attendance areas in the school district.

(4) If a combination of the numerical and percentage basis is used, the number of attendance areas actually designated under paragraph (1) may not exceed the number of such areas that could be so designated if only one such method had been used.

(5) Each of the provisions of this paragraph and of paragraphs (c), (d), (g), and (h) of this section may be applied separately to groups of schools (e.g., elementary, junior high school or middle school, and secondary) grouped in accordance with § 116a.26(1)(1) and

(c) *Ranking of attendance areas.* (1) Except upon request to and approval by the State educational agency based on an assessment of particular educational needs in accordance with subparagraph (2) of this paragraph, a local educational agency shall not designate a school attendance area as a project area (or for inclusion in a project area) unless all attendance areas with a higher percentage or number of children of low-income families (depending on the method used to determine the eligibility of the school attendance area) have been so designated or have been designated to receive (through the use of funds from other sources) services of the same nature and scope as those that would otherwise be provided under Title I.

(2) A local educational agency is not required to designate an area on the basis of its rank. If such agency can demonstrate, to the satisfaction of the State educational agency, that the incidence and severity of educational deprivation in that area is substantially less than in other attendance areas proposed to be designated. In no event, however, shall the State educational agency approve such a request without first determining (in accordance with the procedures in § 116a.26) that the services provided with State and local funds in any area which has a higher percentage or number of children of low-income families but which is not designated for a project area are comparable to the services provided in other areas not designated.

(d) *Districts with no wide variance in the incidence of poverty.* If there is no wide variance in the concentrations of children from low-income families among the several school attendance areas in a school district, the whole of that school district may at the option of the local educational agency be regarded as a project area. Such a determination may be made only if the variation between the areas with the highest and lowest percentage of such children is not more than one-third of the average percentage of children from low-income families in the district as a whole.

(e) *Cooperative projects.* In the case of a project undertaken jointly by two or more local educational agencies, the project area with respect to each school district must be one that qualifies as a project area under this section. However, the whole of the project area must be considered in determining whether it is sufficiently restricted in size in relation to the nature of the project as to maintain the effectiveness of the project in meeting its aims and objectives.

(f) *Determining number of children from low-income families.* Except for the purposes of the second sentence of paragraph (b)(2) of this section, where data are not available to make an accurate determination of the number of children from low-income families, the number may be estimated on the basis of the number of children in families receiving Aid to Families with Dependent Children (AFDC), the number of children eligible to receive benefits under the National School Lunch Act, or any other reliable and uniform indicator of poverty, or a combination of such factors. However, whatever data are used must be applied uniformly throughout the applicant's school district.

(g) *School attendance areas qualifying in prior fiscal years.* A school attendance area which (1) does not meet the requirements of this section for a fiscal year but (2) did meet such requirements and received Title I services in either of the two fiscal years immediately preceding such fiscal year shall be deemed to meet such requirements for such fiscal year. A local educational agency shall not be required to apply the provisions of paragraph (c) of this section to a school attendance area described in the preceding sentence. Neither of such two preceding fiscal years shall be earlier than fiscal year 1975.

(h) *Services to certain public schools in nonqualifying school attendance areas.* The purpose of section 101(a)(5)(A) of Pub. L. 93-380 amending section 141(a)(1)(A) of Title I is to allow local educational agencies to designate for projects, those schools which would otherwise qualify on the basis of their own enrollments but do not qualify because they are not located in an attendance area with large numbers of children from low-income families. Therefore, at the discretion of a local educational agency, notwithstanding any other provision of this section, Title I services may be provided for educationally deprived children enrolled in a school of such agency although the attendance area of that school does not qualify under this section if the percentage or number of children from low-income families in average daily attendance at that school is at least as high as the districtwide average percentage or number required for eligibility on an attendance area basis in accordance with paragraph (b) of this section.

"Educationally deprived children" means (1) children who have need for special educational assistance in order that their level of educational attainment may be raised to that appropriate for children of their age, and (2) children who are handicapped.

§ 116a.21 Needs assessment.

The application by a local educational agency under this part shall contain sufficient information and documentation to enable the State educational agency to determine that the applicant local educational agency has taken the steps in making a needs assessment described as follows:

(a) *Review of existing data.* The local educational agency has reviewed appropriate existing data, including past evaluations of Title I projects in that local educational agency, and data on the performance in the agency's basic programs of instruction of children residing in all eligible attendance areas. This must be done to determine the incidence and severity of educational deprivation among all children residing in an eligible attendance area. Such children shall include children enrolled in private schools, preschool children, children of school age not enrolled in a school, children in local institutions for neglected or delinquent children, as well as children enrolled in a public school.

(b) *Selection of project areas, target groups, and the needs to be served.* The local educational agency, on the basis of its findings from the review conducted under paragraph (a) has selected: (1) The project areas (in accordance with the procedures of § 116a.20); (2) The age or grade levels at which it will operate the Title I project (or projects); and (3) The types of educational needs to be addressed by these projects.

(c) *Identification of all target group children.* The local educational agency, using appropriate data and specified criteria, has identified all of the educationally deprived children in the project areas, who are in the age or grade levels and have the types of educational needs identified in accordance with paragraph (b).

(d) *Identification of children most in need.* The local educational agency has secured any additional objective data which, in combination with the existing data specified in paragraph (a), will enable it to identify which of the educationally deprived children identified in paragraph (c) are most in need of special assistance.

(e) *Selection criteria.* The local educational agency has set forth specific criteria by which the educationally deprived children residing in the project areas and all children in institutions for neglected or delinquent children counted for payment under this part will be chosen to receive Title I services. Educationally deprived children chosen may include those identified as having the greatest need in accordance with paragraph (d) and those residing in a project area who participated in a project conducted in the previous year (if such children are still educationally deprived). A child may not be excluded from participating in a project because he or she is not from a low-income family or not attending school at the time.

(f) *Diagnostic procedures.* The local educational agency has used adequate diagnostic procedures to determine the special educational needs of the children chosen to be served in a Title I project.

(g) *Consultation.* In making the determinations under this section, the local educational agency has, to the extent feasible, consulted with teachers, parents, and persons knowledgeable of the needs of private and public school children and children in local institutions for neglected or delinquent children.

§ 116a.22 Project description, size, scope, and quality.

(a) *Project description.* Each application for one or more projects under this part shall contain a description of the project in sufficient detail to enable the State educational agency to make the determinations detailed in paragraph (b) of this section. This description shall include:

(1) The educational objectives of the project and the relationship of these objectives to the special educational needs identified by the diagnostic procedures required by paragraph (f) of § 116a.21;

(2) The resources (including the type of staff and materials) to be used in the implementation of the projects and plans for their use;

(3) The time periods and instructional settings for the project services;

(4) The number of the children to be served and a general description of their special educational needs;

(5) The approaches, methods, and techniques that will be used to evaluate the success of the project in attaining its objectives;

(6) A budget detailing the expenditures required for the implementation of the project;

(7) The special educational needs and number of children, if any, who reside outside the project area and who will participate, as well as the manner of their participation; and

(8) Specific provisions for informing and consulting with parents concerning the services to be provided for their children under Title I, the performance of their children and the ways in which such parents can assist their children in realizing the benefits those services are intended to provide.

(b) *Size, scope, and quality.* A State educational agency shall not approve a project for which an application has been made unless it determines that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served. Such a determination shall be made only if the State educational agency finds that:

(1) The educational objectives of the project are adequately related to one or more of the special educational needs of the participating children as identified in accordance with § 116a.21;

(2) The resources to be used in the project and the plans for their use are consistent with and show reasonable promise of meeting the objectives of the project;

(3) The evaluation plans comply with § 116.43 and are adequate for measuring the attainment of the objectives described in subparagraph (a)(1) of this section;

(4) The expenditures for the project (as set forth in the budget) are:

(i) At least $2500 or a lesser amount as may be set by the State educational agency, in accordance with section 141 (a)(1)(B) of Title I, upon its determination that it would be impracticable (for reasons such as distance or difficulty of travel) for the applicant to join effectively with other local educational agencies for the purpose of meeting that dollar requirement;

(ii) Not imprudent, extravagant, excessive, or wasteful; and

(iii) Proposed for use solely to meet the special educational needs of educationally deprived children identified in accordance with § 116a.21;

(5) The project is concentrated on a sufficiently limited number of services for a sufficiently limited number of educationally deprived children, identified in accordance with § 116a.21, to show reasonable promise of meeting the educational objectives identified in subparagraph (a)(1) of this section;

(6) The project has not been designed to meet, nor will it have the effect of meeting, the general needs of schools or of the student body at large in a school or of a specified grade in a school;

(7) Any services or resources provided under Title I will be offered to only those children who have been selected to participate in the project in accordance with § 116a.21, except as approved in accordance with paragraph (b)(9);

(8) If services are provided in the regular classroom or in other settings in which children other than those properly selected to participate in the project will be presented, these services will be directed to the selected children and the effectiveness of the project will not be impaired by the presence of children other than those selected to participate;

(9) If educationally deprived children residing outside the project area will participate: (i) These children will meet the criteria other than residency for participation in the project; (ii) Their participation will not result in the exclusion of children from the project area who meet these criteria; (iii) The project will have been designed solely for the selected children from the project area; and (iv) Participation of children from outside the project area will not impair the effectiveness of the project and will not result in any extra cost; and

(10) Services are equitably provided to all children with State and local funds without regard to the availability of Title I funds in the applicant's schools for the educationally deprived children

§ 116a.23 Participation by children enrolled in private schools.

(a) *General requirement.* Each local educational agency shall provide special educational services designed to meet the special educational needs of educationally deprived children residing in its school district who are enrolled in private schools. Such educationally deprived children shall be provided genuine opportunities to participate therein consistent with the number of such educationally deprived children and the nature and extent of their educational deprivation. The special educational services shall be provided through such arrangements as dual enrollment, educational radio and television, and mobile educational services and equipment. Such opportunities shall be made available to those educationally deprived children who reside in the public school attendance area or areas designated as the project area. If it is not practicable to apply a project to children enrolled in private schools because they are enrolled in a private school located in another school district, the applicant may make arrangements for such children with the local educational agency serving such other school district, including where appropriate, the making of a joint project application.

(b) *Determination of needs, number of children, and types of services.* The needs of educationally deprived children enrolled in private schools, the number of such children who will participate in the program, and the types of special educational services to be provided for them shall be determined, after consultation with persons knowledgeable of the needs of these private school children, on a basis comparable to that used in providing for the participation in the program by educationally deprived children enrolled in public schools.

(c) *Nature and comparability of services.* If, after consultation with persons knowledgeable of the needs of private school children, the local educational agency determines that it is necessary, in order to meet the special educational needs of eligible private school children, services and activities may be provided to such children which are different from those provided to public school children. However, consistent with the principles set forth in § 116a.22 of this subpart, those services and activities must be comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equally high priority.

(d) *Design of projects.* The opportunities for participation by educationally deprived children in private schools in the program of a local educational agency under Title I shall be provided through projects of the local educational agency which furnish special educational services that meet the special educational needs of such educationally deprived children rather than the needs of such schools or the student body at large or of children within a specific grade. Provisions for serving children in private schools shall not include the financing of the existing level of instruction in the private schools. The application shall contain sufficient information to enable the State educational agency to determine that, with respect to children enrolled in private schools, the requirements of § 116a.21 have been satisfied, and such application shall state the number of such children who were found to be educationally deprived according to specific criteria, the number of such children who are expected to participate in each of the services under Title I and the degree and manner of their expected participation.

(e) *Avoidance of separate classes.* Any project involving the participation at the same site of children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid classes which are separated by school enrollment or religious affiliation of the children.

(f) *Limitations on availability of services in other than public school facilities.* Public school personnel may be made available on other than public school facilities only to the extent necessary to provide special services (such as therapeutic, remedial, or welfare services, broadened health services, school breakfasts for poor children, and guidance and counseling services) for those educationally deprived children for whose needs such services were designed and only when such services are not normally provided by the private schools. The application for a project including such special services shall provide satisfactory assurance that the applicant will maintain continuing administrative direction and control over those services and, in accordance with § 116.36, over the use of equipment required to provide such services. Provisions for special educational services for educationally deprived children enrolled in private schools shall not include the paying of salaries for teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control, nor shall they include the construction of private school facilities.

§ 116a.23–1 Waiver of requirements for participation by children enrolled in private schools.

(a) *Approval of applications.* The State educational agency shall not approve an application for a grant for a program that does not meet the requirements of § 116a.23 of this subpart unless and until a final determination to waive such requirements has been made by the Commissioner pursuant to section 141A of Title I and satisfactory arrangements have been made for the provision of such services by the Commissioner under this section. The State educational agency shall notify the Commissioner that an application has been disapproved because of the local educational agency's failure to meet the requirements of § 116a.23 and set forth the reasons and supporting evidence for such disapproval.

(b) *Waivers in cases of legal prohibition.* If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by sections 141(a)(2) and 141A(a) of Title I and § 116a.23 of this subpart, the Commissioner will waive such requirement and the provisions of section 141(a)(2) and will arrange for the provision of services to such children through arrangements which shall be subject to the requirements of section 141A(a) of Title I. For the purpose of determining whether a local educational agency is prohibited by law from providing for participation of educationally deprived children in private schools, the Commissioner may require the State educational agency to furnish an opinion of the Attorney General of the State with regard to the status of State law regarding such participation.

(c) *Waivers in cases of substantial noncompliance.* (1) If the Commissioner determines that a local educational agency has substantially failed to provide for the participation, on an equitable basis, of educationally deprived children enrolled in private elementary and secondary schools (as set forth in an approved application) as required by section 141(a)(2) and 141A(a) of Title I and § 116a.23 of this subpart, he shall make arrangements for the provision of services to such children, which shall be subject to the requirements of section 141A(a) of Title I, upon which determination the provisions of such section and section 141(a)(2) of Title I shall be waived.

(2) Where a local educational agency, pursuant to an application approved under this Part, undertakes to provide for the participation, on an equitable basis, of children enrolled in private elementary and secondary schools (as required by Title I and § 116a.23 of this Part) and such agency thereafter reduces the size, scope, or quality of the services provided such children prior to

(i) a final determination by the Commissioner to waive such requirement and (ii) the implementation of satisfactory arrangements for the provision of such services by the Commissioner under this section, no obligations or expenditures incurred by such agency may be recognized as allowable under Title I for the period during which such reduction of services takes place.

(d) *Cost of arrangements by Commissioner.* When the Commissioner arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate allocation or allocations under Title I. In the case of arrangements under this section, such allocation shall be the allocation of the local educational agency affected, and at the discretion of the Commissioner, the proportionate amount of State administrative funds, except that no State may receive less than $150,000 as provided by § 116.4.

(e) *Notice, opportunity for hearing, judicial review.* (1) The Commissioner shall not take any final action under this section until he has afforded the State educational agency and local educational agency affected by such action at least sixty days notice of his proposed action and an opportunity for a hearing with respect thereto on the record.

(2) If a State or local educational agency is dissatisfied with the Commissioner's final action after a hearing under paragraph (e)(1) of this section, it may, within sixty days after notice of such action, file, with the United States Court of Appeals for the circuit in which such State is located, a petition for review of that action in accordance with the provisions in section 141A(b)(4) of Title I.

§ 116a.25 Parent advisory councils.

(a) *General requirements.* Each local educational agency shall demonstrate in each annual application submitted under this subpart that it has established an advisory council (hereinafter "district advisory council") for the entire area to be served under Title I and, except as provided in paragraph (f) of this section, an advisory council for each school of such agency served by the program or project set forth in the application (hereinafter "school advisory council"). Such agency may establish intermediate councils for groups of schools within its school district. The purpose of the advisory councils is to encourage parental involvement at the local level as an important means of increasing the effectiveness of programs under Title I. The application of such agency shall demonstrate that the district advisory council, each intermediate council, and each school advisory council, in accordance with the provisions of this section:

(1) (i) Has, as a majority of its members, (A) parents of children (including parents of private school children) who are currently participating in the program or (B) parents of children who will participate in the projects proposed for the following fiscal year, if satisfactory data is available to identify such children.

(2) (i) In the case of a districtwide or intermediate advisory council, is composed of members selected by the parents in the school attendance areas designated as project areas, and (ii) in the case of a school advisory council, is composed of members selected by the parents in the school attendance area of such council;

(3) Has been given responsibility for advising the local educational agency in the planning, implementation, and evaluation of, such program or project;

(4) Is provided by such agency with access to appropriate information concerning such program or project;

(5) Operates under procedures which are adequate to insure timely and proper performance of its functions, including procedures for convening meetings, and for the recording and maintenance of minutes; and

(6) Has been provided with procedures for coordinating its functions and its recommendations to the local educational agency with those of other councils in the district.

(b) *Participation of parents in selection of councils.* All of the parents of children eligible to attend a public school serving a project area, including parents of children living in such area and enrolled in private schools, shall be eligible to participate in the selection of members of the appropriate district and intermediate councils and the school advisory council of that school.

(c) *Identification of parents eligible for membership.* In consultation with the district advisory council, the local educational agency shall establish appropriate procedures whereby parents of children who are currently participating in a project or who will be participating in the proposed project be identified so that they may be considered for membership on a school, intermediate or district advisory council. In no case may parents be identified, for the purposes of this subsection, unless they have first given their consent to be so identified.

(d) *Procedure for selection.* The local educational agency, after consultation with the district advisory council, shall establish appropriate procedures for the nomination and selection of parents eligible under paragraph (c) and other persons for service on district, intermediate and school advisory councils. Such procedures shall include provision for affording timely and adequate notice to the parents and the general public in the agency's school district (or in the appropriate school attendance area in the case of a school council) of the time, place, and method whereby such selection would be made. The local educational agency shall take appropriate measures, such as the publication of the notice in a language other than English, to insure that adequate notice is provided for parents in an area where the dominant language is other than English. Upon the selection of members of the council, the names of all members of such council shall be made available to the public through appropriate notices and continue to be available upon request. Members of an advisory council shall be residents of the school district, and members of a school council shall reside in the attendance area of that school.

(e) *Membership of districtwide or intermediate councils.* The local educational agency may provide that the membership of its districtwide or intermediate advisory councils will be composed solely of members of the school councils, each member of which is elected by his or her school council.

(f) *Local educational agencies with one school or less than 1,000 students in all project area schools.*

If a local educational agency (1) has less than 1,000 students enrolled in its project area schools, or (2) has only one project area school, it may decide, with the approval of the State educational agency to have its district advisory council also serve as its school councils. In any such case the district council shall consist of at least one advisory council member representative of each project area school.

(g) *Involvement of councils.* Each local educational agency shall include in its application sufficient information to enable the State educational agency to make the following determinations:

(1) That each council member has been furnished copies of Title I of the Act, the Federal regulations, guidelines and criteria issued pursuant thereto, State Title I regulations and guidelines,

(2) That all council members will receive appropriate training materials and orientation which will assist them in carrying out their functions under this section; and

(3) That each council will be provided with the local educational agency's current application, other information and documents (such as prior applications in accordance with the availability of information to the public pursuant to § 116.45 for Title I projects and evaluations thereof) as may be needed for the effective involvement of each such council in the planning, implementation, operation, and evaluation of projects under Title I;

(4) That each council has had an adequate opportunity to consider the information available concerning the special educational needs of the educationally deprived children residing in the project area (or areas), and the various programs available to meet those needs, and to make recommendations concerning those needs which should be addressed through the Title I program and similar programs; and

(5) That all parents of children to be served have had an opportunity to present their views concerning the application to the appropriate school council, and that each council has had an opportunity to submit its comments to the local educational agency which shall consider such comments in determining whether or not the application shall be approved and submitted to the State educational agency.

(h) *Additional rules and procedures.* The State educational agency may establish such additional rules and procedures, not inconsistent with the provisions of this section, as may be reasonably necessary to insure the involvement of parents and the proper organization and functioning of parent advisory councils.

§ 116.33 Reimbursement for expenses incurred by parent council members and volunteers.

Members of parent councils and volunteers not receiving regular compensation under Title I may be reimbursed from Title I funds for personal expenses directly attributable to the performance of their duties and functions as set forth in approved applications.

§ 116a.26 Comparability of services.

(a) *State agency action regarding applications.* A State educational agency shall not approve an application of a local educational agency for a grant under section 141(a) of Title I, or make payments of Title I funds under a previously approved application of such agency, unless that local educational agency has demonstrated, in accordance with paragraph (e) of this section, that services provided with State and local funds derived from public sources in Title I project areas are at least comparable to the services being provided with such State and local funds in schools serving attendance areas not designated as Title I project areas. Such approval shall not be given unless the local educational agency also provides the assurances and the additional information required by paragraph (h) of this section with respect to the maintenance of comparability. For the purpose of this section, State and local funds include those funds used in the determination of fiscal effort in accordance with § 116.19.

(b) *Reports by local educational agencies.* The State educational agency shall require each local educational agency (except as provided in paragraph (i) of this section) to submit a report in such form as the Commissioner will prescribe, containing the information required by the State educational agency to make the determinations specified in paragraph (e) of this section. Such report shall include the following data for each public school serving a project area (in whole or in part) unless such school is exempted by paragraph (k) of this section, and on a combined basis, for all other schools of corresponding grade levels (as grouped in accordance with paragraph (i) of this section):

(1) The number of children enrolled. For this purpose, children enrolled in kindergarten may be counted on a full-time equivalency basis. Additionally, if the governing body of a State or a local educational agency has mandated in law or local ordinance that State and local funds shall be expended at different rates for children in certain educational categories, age groupings, or grade levels, then the number of such children enrolled for the purpose of the local educational agency's comparability report may, with the approval of the State educational agency, be derived by multiplying the actual number of children enrolled by the rate specified for each such category, age grouping or grade level.

(2) The full-time equivalent number of certified and noncertified instructional staff members, who are paid with State or local funds regularly assigned to such public school or schools;

(3) The total amount of State and local funds being expended on an annual basis for salaries for such instructional staff members less the amount of such salaries based on length of service (longevity);

(4) The number of enrolled children as reported under subparagraph (1) of this paragraph per instructional staff member as reported under subparagraph (2) of this paragraph;

(5) The amount expended per enrolled child as reported under subparagraph (1) of this paragraph for salaries for instructional staff as reported under subparagraph (3) of this paragraph; and

(6) The number of children and of members of instructional staff and expenditures for such staff, if any, that were excluded from determinations in accordance with paragraph (j)

The term "instructional staff members" as used in this section means staff members who render direct and personal services which are in the nature of teaching or the improvement of the teaching-learning situation. The term includes teachers, principals, consultants, or supervisors of instruction, librarians, and guidance and psychological personnel; it also includes aides or other paraprofessional personnel including clerical personnel employed to assist such instructional staff members in providing such services.

(c) *Date as of which data must be collected.* The data required by paragraph (b) of this section shall be as of a date not later than November 1 of each fiscal year as specified by the State educational agency. To the extent practical such date shall be the date nearest October 1 as of which similar data, such as enrollment data, are required for reports to the State educational agency. The local educational agency with the approval of the State educational agency may, however, submit data based on averages for a definite regular school reporting period which includes the date specified by the State educational agency.

(d) *Date for filing report.* The report required by paragraph (b) of this section shall be filed with the State educational agency no later than December 1 of each fiscal year.

(e) *Determination of comparability.* The services being provided by the local educational agency with State and local funds in a Title I project area shall be deemed to be comparable to the services being provided with such funds in areas not being served under Title I, if the State educational agency determines that, for schools serving corresponding grade levels:

(1) The number of children enrolled per instructional staff member, reported in accordance with paragraph (b)(4) of this section, for each public school serving a Title I project area is not more than 105 percent of the average number of children per instructional staff member in all other public schools in the applicant's district; and

(2) The annual expenditure per child, determined in accordance with paragraph (b)(5) of this section, in each public school serving a Title I project area is not less than 95 percent of such expenditure per child in all other public schools in the applicant's district.

(f) *Action by State agency in cases of non-comparability.* (1) If any school serving a Title I project area is determined not to be comparable under paragraph (e) of this section, as of the date specified in accordance with paragraph (c) of this section, and the local educational agency does not submit a revised comparability report by December 1 of that year showing that comparability in accordance with this paragraph has been achieved, the State educational agency shall as of that December 1 suspend its approval of the project until the date such a report is submitted to that agency, provided the date of such submission is not later than the following March 31. Where such a report is filed by March 31, such suspension shall be lifted as of the date on which comparability has been achieved by such agency as shown in such report. Each revised report shall include all data required by paragraph (b), recorded as of a specific date on which the reallocation of resources has taken effect.

(2) If such a report is not submitted to the State educational agency by March 31, that agency, after notifying the applicant agency and providing it an opportunity for a hearing (in accordance with the provisions of § 116.6(b) of Part 116), shall finally disapprove the project and reallocate all unobligated funds in the applicant's allocation as of December 1 to other complying local educational agencies in the State in accordance with the provisions of § 116a.11 of this part.

(3) If the State educational agency finds that, as of a date after December 1, a local educational agency has failed to maintain comparability in accordance with paragraph (e) of this section and has not taken prompt action to correct that lack of comparability, the State educational agency shall, as of the date of such failure to maintain comparability, suspend its approval of the project until the date as of which such local educational agency (by means of a revised comparability report) demonstrates that comparability has been achieved. If such local educational agency fails to demonstrate compliance by March 31, the State educational agency shall revoke its approval of the project (subject to notice and opportunity for hearing) as of the date the local educational agency was found not to be in compliance and shall reallocate the balance of the unobligated funds to other complying local educational agencies in the State.

(4) No Title I funds may be used to pay for obligations incurred by a local educational agency during a period of suspension under this section.

(g) *Special reports regarding migratory children.* (1) For the purpose of this section, the Commissioner may designate those local educational agencies which enroll substantial numbers of migratory children of migratory agricultural workers and migratory fishermen from which a State educational agency shall secure special reports. Each such report shall be in the form prescribed in paragraph (b) of this section and the data provided shall be as of the date prescribed by the Commissioner.

(2) Such date will be selected on the basis of the best available information

indicating when the highest concentration of migratory children of migratory agricultural workers or migratory fishermen in the school district of the local educational agency is most likely to occur. The Commissioner will also designate the date such a special report shall be submitted to the State educational agency and by that agency to him.

(3) The State educational agency shall determine on the basis of such special report whether the local educational agency is providing comparable services in project areas in accordance with paragraph (e) of this section and shall take such action as may be required by paragraph (f) of this section.

(h) *Assurances and data filed by local educational agencies.* On or before July 1 of each year each local educational agency shall file with the State educational agency:

(1) An assurance that the comparability of services previously demonstrated with respect to Title I project areas in accordance with paragraph (e) of this section will be maintained in all such areas, including areas serving migratory children of migratory agricultural workers or migratory fishermen, that will be designated as Title I project areas for the next fiscal year;

(2) Data on schools serving attendance areas, if any, that will be designated for Title I projects for the next fiscal year but were not designated for such projects in the preceding fiscal year. Such data shall show either that such schools would have been comparable during the preceding fiscal year if those areas had been designated for projects or will, as the result of specific action by the local educational agency, be comparable during the next fiscal year; and

(3) A statement of the specific policies and procedures adopted by the local educational agency to assure that textbooks, library resources, and other instructional materials and supplies are provided for each school serving a Title I project area on a basis that is comparable to that for non-project areas.

(i) *Grouping of schools.* (1) For the purposes of this section, a local educational agency shall group its schools by corresponding grade levels not to exceed three such groups (generally designated as elementary, intermediate or junior high school, and high school or secondary) for all the schools in the school district of such agency, except that local educational agencies providing education at seven or fewer grade levels above kindergarten shall be limited to one group, and those agencies providing education only at eight or nine grade levels above kindergarten shall be limited to two groups. In the case of agencies providing education at any level from grades six through twelve but only at those levels, the number of such groups shall be limited to two if the number of such grade levels is five or six and to one group if the number of such grade levels is four or less.

(2) A school serving grades in two or three such groups shall be included in that group with which it has the greatest number of grades in common. Where the number of grades in common are equal between two or more groups, the school shall be included in the lower grade division. For example, a local educational agency might have the following grade span organization: K–6 (elementary), 7–9 (junior high), and 10–12 (senior high). In addition, the local educational agency might have an intermediate school serving grades 5–8. Since this intermediate school has two grades in common with the elementary division (grades 5 and 6) and two grades in common with the junior high division (grades 7 and 8), it would be included in the lower grade division (elementary) for determining comparability.

(3) Local educational agencies having schools serving eight or more grades above kindergarten may consider such schools to be a separate group in addition to the number of groups determined under subparagraph (1).

(4) If, for a particular grade span, one school has an enrollment that is at least two times that of another, the local educational agency may divide such schools in that grade span into two groups; one for the schools with the larger enrollments and one for the schools with the smaller enrollments, except as provided in the following sentence. Local educational agencies having schools with enrollments of 100 or less shall exclude such schools in making a determination of the size of the smallest school.

(20 U.S.C. 241e(a)(3))

(j) *Exclusions from determinations in certain cases.* (1) In cases where handicapped children (as defined in § 121.2 of this chapter) or children with specific learning disabilities (as defined in § 121.2 of this chapter) are enrolled full time in special education classes, and where children of limited English speaking ability are enrolled full time in special programs of bilingual education, all those children, the teachers and other instructional staff members who serve them, and instructional expenditures for such staff may be excluded by the local educational agency (at its option) in determining the comparability of services provided in project areas.

(2) Subject to the provisions of paragraph (j)(3) of this section, a local educational agency may (at its option) exclude from determinations under this section, expenditures of State and local funds for (i) programs of bilingual education for children of limited English-speaking ability or (ii) special programs for handicapped children where such children of limited English-speaking ability or such handicapped children do not participate in such programs on a full time basis and may also exclude the staff employed with such State and local funds. If expenditures for staff and numbers of staff are excluded in accordance with the preceding sentence, then the full time equivalent number of children served under such programs may also be excluded.

(3) In order to make the exclusions as provided for in paragraph (j)(1) and (j)(2) of this section, a local educational agency must demonstrate, to the satisfaction of the State educational agency, that the services provided with such State and local funds to such children of limited English-speaking ability or handicapped children who reside in Title I project areas are comparable to such services provided to similarly disadvantaged children in nonproject areas.

(4) For the purposes of this section, the term "program of bilingual education" means a program of instruction designed for children of limited English speaking ability.

(5) State and local funds expended for State and local programs similar to programs provided under Title I for educationally deprived children and the number of full time equivalent instructional staff members employed through the use of such funds may, at the option of the local educational agency, be excluded from determinations under this section. For the purpose of this section a State or locally funded program for educationally deprived children shall be considered to be similar to programs under Title I if (i) the participating children are "educationally deprived" children as defined in § 116.2 of Part 116; (ii) the program is based on performance objectives related to educational achievement and provides supplementary services designed to meet the special educational needs of those particular children; (iii) the program is evaluated in a manner consistent with those performance objectives, and (iv) for purposes of determining compliance with clauses (i)–(iii) the local educational agency is separately accountable to the State educational agency for any State or local funds expended for such program.

(k) *Schools with 100 or less children.* A school with an enrollment of 100 children or less (as of the date or dates the data required by paragraph (b) of this section are collected) shall not be included for purposes of this section, provided that, if the local educational agency operates schools of such size and corresponding grade levels both for areas to be served and areas not to be served under Title I, such agency files with the State educational agency a statement of the policies it will follow concerning the allocations of staff to such schools and the State educational agency finds that such policies are consistent with the objectives of this section.

(l) *Inapplicability to certain agencies.* The requirements of this section are not applicable to a local educational agency which has shown the State educational agency that it is operating only one school serving children at the grade levels at which services under Title I are to be provided or which has designated the whole of the school district as a project area in accordance with § 116a.20(d).

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